

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

JESSACA CUMMINGS,

Plaintiff,

v.

**CIVIL ACTION NO.: 3:17-CV-46
(GROH)**

UNITED STATES OF AMERICA,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION

This matter is before the Court for consideration of a Report and Recommendation (“R&R”) issued by United States Magistrate Judge Robert W. Trumble. Pursuant to this Court’s Local Rules, this action was referred to Magistrate Judge Trumble for submission of an R&R. On April 27, 2017, Magistrate Judge Trumble issued his R&R, recommending that this Court dismiss without prejudice the Plaintiff’s motion for return of property and deny as moot her application to proceed without prepayment of fees.

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court is required to make a *de novo* review of those portions of the magistrate judge’s findings to which objection is made. However, this Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge to which no objections are made. Thomas v. Arn, 474 U.S. 140, 150 (1985). Failure to file objections in a timely manner constitutes a waiver of *de novo* review and a plaintiff’s right to appeal this Court’s order. 28 U.S.C. § 636(b)(1)(C); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984).


In this case, pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule 72(b) of the Federal Rules of Civil Procedure, objections to Magistrate Judge Trumble's R&R were due within fourteen days after being served with a copy of the same. The R&R was sent to the Plaintiff by certified mail, return receipt requested, on April 27, 2017. ECF No. 4. Service was accepted by the Plaintiff on May 2, 2017. ECF No. 6. To date, no objections have been filed and thus the Court will review the R&R for clear error.

Upon consideration, the Court finds that it is without jurisdiction to consider the Plaintiff's motion for return of property. Pursuant to Federal Rule of Criminal Procedure 41(g) and the Fourth Circuit's decision in United States v. Garcia, 65 F.3d 17 (4th Cir. 1995), the Plaintiff must file her motion in the district in which the property was seized. Here, the proper court is the United States District Court for the District of Connecticut.

Accordingly, upon review, and finding no error, the Court **ORDERS** Magistrate Judge Trumble's Report and Recommendation [ECF No. 4] **ADOPTED** for the reasons more fully stated therein. The Court **DISMISSES** the Plaintiff's motion [ECF No. 1] **WITHOUT PREJUDICE** and **DENIES** her application to proceed without prepayment of fees [ECF No. 2] **AS MOOT**.

The Court **DIRECTS** the Clerk to strike this case from the active docket and transmit a copy of this Order to the *pro se* Plaintiff by certified mail, return receipt requested.

DATED: May 26, 2017


GINA M. GROH
CHIEF UNITED STATES DISTRICT JUDGE